



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

W. Tayloe Murphy, Jr.
Secretary of Natural Resources

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Robert G. Burnley
Director

Steven A. Dietrich
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION SPECIAL ORDER BY CONSENT ISSUED TO GRAND HARBOUR LTD, LLC AND CRAIG CARON

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §62.1-44.15(8a) and 8(d), between the State Water Control Board, Grand Harbour LTD, LLC and Mr. Craig Caron for the purpose of resolving certain violations of environmental law and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
2. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
3. "Director" means the Director of the Department of Environmental Quality.
4. "Facility" means the Grand Harbour LTD, LLC (GH) property known as the Grand Harbour Subdivision on Morewood Road in Hardy Virginia for which Mr. Craig Caron is the Operator.
5. "Order" means this document, also known as a Consent Special Order.
6. "Permit" means the VPDES General Permit For Discharges Of Storm Water From Construction Activities.

7. "Va. Code" means the Code of Virginia (1950), as amended.
8. "VPDES" means the Virginia Pollutant Discharge Elimination System.
9. "WCRO" means the West Central Regional Office of DEQ, located in Roanoke, Virginia.

SECTION C: Findings of Fact and Conclusions of Law

1. GH owns the Facility property.
2. The construction activities at the Facility are the subject of the Permit that allows storm water discharges associated with small construction activity. GH originally submitted to DEQ the required General Storm Water Permit forms and fee for registration of construction activities at the Facility on August 14, 2003. General Permit coverage was originally granted to Mr. Caron by a letter signed by the WCRO Permit Manager dated August 21, 2003, assigning registration number VAR102810 to GH. The letter indicated coverage would expire on June 30, 2004. The registration form lists Mr. Craig Caron as the Construction Activity Operator. Coverage was reauthorized by the WCRO Permit Manager August 20, 2004 and expires June 30, 2009.
3. Subdivision construction activities in February of 2003, were being conducted without a permit in violation of Code § 62.1-44.5 and regulations 9 VAC 25-180-60 and 9 VAC 25-31-120.B. 15.64 acres have been disturbed.
4. An unpermitted discharge that was evident to DEQ on an inspection of the Facility July 17, 2003, is a violation of Code § 62.1-44.5 and regulation 9 VAC 25-31-50.
5. DEQ noted apparent violations of the State Water Control Law and regulations in Notice of Violation issued by DEQ on August 12, 2003 as:
 - Failure to submit a Registration Statement and required fees for a Small Construction Activity Permit in violation of Code § 62.1-44.5 and regulations 9 VAC 25-180-60 and 9 VAC 25-31-120.B.
6. Mr. Craig Caron failed to adhere to Part II. D Permit requirements resulting in operational deficiencies at the Facility which led to excessive sediment deposits in the unnamed creek to Smith Mountain Lake, into which stormwater from the Facility discharges, as well as downstream in a cove of Smith Mountain Lake into which the creek enters. The following deficiencies were noted in an investigation performed by WCRO staff on August 28, 2003:
 - Mr. Caron installed two large unapproved check dams in the unnamed creek channel.
 - Silt fences were not maintained or were removed.
 - Poor vegetative establishment.

- Disturbed areas were not revegetated or stabilized.
- Sediment traps were inadequately sized.
- Informal trap structures were used rather than properly constructed traps.
- Loose, rather than properly constructed, soil berms were created to divert water that overtops traps. These practices lead to additional sedimentation of the creek and cove that would otherwise not have occurred absent the noted practices.
- The main road is unstabilized.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 62.1-44.15(8a) and (8d), orders GH and Mr. Caron, and GH and Mr. Caron agree to pay a civil charge of **\$7,564** within 15 days of the effective date of the Order in settlement of the violations cited in this Order. **Payment shall be made by check payable to the "Treasurer of Virginia", delivered to:**

**Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240**

The payment check must include the Federal Identification Numbers of GH and Mr. Caron and a notation that it is tendered for payment of a civil charge pursuant to this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of GH and Mr. Caron, for good cause shown by GH and Mr. Caron, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice of Violation issued on August 12, 2003. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, GH and Mr. Caron admit the jurisdictional allegations, but neither admits nor denies the factual allegations or legal conclusions contained herein. The Department and GH and Mr. Caron agree that the actions undertaken by GH and Mr. Caron in accordance with this consent order do not constitute an admission of any liability

by GH and Mr. Caron. GH and Mr. Caron do not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Order, the validity of the Statement of Facts or Determinations contained in Section C, of this Order.

4. GH and Mr. Caron consent to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. GH and Mr. Caron declare that they have received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Water Control Law and they waive the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by GH and Mr. Caron to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. GH and Mr. Caron shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. GH and Mr. Caron shall show that such circumstances were beyond their control and not due to a lack of good faith or diligence on their part. GH and Mr. Caron shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any

condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on GH and Mr. Caron, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee, GH and Mr. Caron. Notwithstanding the foregoing, GH and Mr. Caron agree to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to GH and Mr. Caron. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve GH and Mr. Caron from any obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By their signature below, GH and Mr. Caron voluntarily agree to the issuance of this Order.

And it is so ORDERED this day of MARCH 16, 2004⁵

Steven A. Dietrich
FOR Robert G Burnley, Director
Department of Environmental Quality

GH and Mr. Caron voluntarily agree to the issuance of this Order.

[Signature]
Craig Caron

Date: 11-12-04

GRAND HARBOUR LTD, LLC
By: [Signature] - member
Date: 11-12-04

Commonwealth of Virginia

City/County of Franklin

The foregoing document was signed and acknowledged before me this 12 day of

November, 2004, by Craig Caron.

Notary Public Cheryl A. Argye

My commission expires: 9/30/2008

Commonwealth of Virginia

City/County of Franklin The foregoing document was signed and
acknowledged before me this 12 day of November, 2004,
by Craig Caron who is the Member of Grand Harbor,
LTD, LLC, on behalf of said Limited Liability Company.

Notary Public Cheryl A. Argye

My commission expires: 9/30/2008

And it is so ORDERED this day of MARCH 16, 2004.⁵

Steven A. Dietrich
FOR Robert G Burnley, Director
Department of Environmental Quality

GH and Mr. Caron voluntarily agree to the issuance of this Order.)

[Signature]
Craig Caron

Date: 11-17-04

GRAND HARBOUR LTD, LLC

By: [Signature]

Date: 11-17-04

Commonwealth of Virginia

City/County of Franklin

The foregoing document was signed and acknowledged before me this 17 day of

Nov., 2004, by Craig Caron.

Notary Public Brenda S. Rose

My commission expires: 11-30-04

Commonwealth of Virginia

City/County of Franklin

The foregoing document was signed and acknowledged before me this 17 day of Nov., 2004,

by _____ who is the _____ of Grand Harbor, LTD, LLC, on behalf of said Limited Liability Company.

Notary Public Brenda S. Rose

My commission expires: 11-30-04

Appendix A

Mr. Craig Caron shall:

1. Submit an approvable corrective action plan and schedule addressing the permit deficiencies noted in paragraph C (6) hereof to DEQ/WCRO by **November 15, 2004**. The plan and schedule, once approved by DEQ, will be incorporated into and be an enforceable part of this Order. The plan shall ensure, at a minimum that:
 - All construction, construction access and demolition activities associated with the Facility are accomplished in a manner that is in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.
 - The Erosion and Sedimentation Control Plan for the Facility is modified to comply with the requirements of the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992. The approved plan must additionally ensure that construction activities and/or waste handling does not result in impact to surface waters at or near the Facility.

The corrective action plan shall include actions and a schedule for removal of sediment accumulations in the Smith Mountain Lake cove. The sediment removal portion of the plan shall take into consideration the following:

- Sediment removal shall be accomplished in a manner that minimizes disturbance of the original cove bottoms and minimizes turbidity levels in the water column. Craig Caron shall notify DEQ/WCRO in writing by certified letter at least 10 days prior to the start of activities authorized by the plan. The notification shall include identification of the impact area at which work will occur. Department personnel, in order to reestablish cove conditions as they existed prior to sediment deposition, may be on site during part or all of the removal operations. **Sediment removal in the cove will be no less than 122 cubic yards** unless DEQ personnel on-site during the removal process determine that less than 122 cubic yards will restore the cove to conditions prior to sediment deposition.
- Temporary disturbances to surface waters during construction shall be avoided. All temporary fills shall be removed in their entirety and the affected area returned to the preexisting contours.
- The plan work shall be executed in a manner so as to minimize any adverse impact on beneficial uses as defined in §62.1-10 (b) of the Code of Virginia.
- No approved activity may substantially disrupt the movement of aquatic life indigenous to the water body, including those species that normally migrate through the area.
- All remediation materials (including fill, construction debris, and excavated and woody materials) temporarily stockpiled shall be placed on mats or geotextile fabric, immediately stabilized to prevent entry into state waters, managed such that leachate does not enter state waters, and completely removed within 30 days following completion of the activity. Disturbed areas shall be stabilized within 30 days following removal of the stockpile.

- Immediately adjacent to the sediment removal areas, water quality standards shall not be violated as a result of the removal activities. Access roads shall be constructed to minimize adverse effects on surface waters during remediation activities. All material removed shall be disposed of in an approved upland area.
 - If evidence of impaired water quality, such as a fish kill, is observed during the removal activities, the activity shall cease and the DEQ shall be notified immediately.
 - A removed material management plan shall be included in the sediment removal portion of the plan for any designated upland disposal site. No removal activity shall take place before the plan is approved by DEQ. Photo stations shall be established to document the corrective action aspects of removal activities within impact areas. Photographs should document the pre-existing conditions, activities during sediment removal, and post-removal conditions within one week after completion of removal activities.
 - Provisions shall be made to monitor for any spills of petroleum products or other materials during the sediment removal process. These provisions shall be sufficient to detect and contain the spill and notify the appropriate authorities.
 - After removal activities begin, reports shall be submitted to DEQ/WCRO **every 30 days**. The reports shall include, at a minimum, the following: A written statement regarding when work started in the removal area, where work was performed, what work was performed, and what work was completed. The report shall include properly labeled photographs (to include date, time, and name of the person taking the photograph) a brief description of what photo shows. Such photos must include pictures of the removal activities that include dredging, dredge disposal, dredge stock piling, etc.
 - Any fish kills or spills of oil or fuel shall be immediately reported upon discovery. If spills or fish kills occur between the hours of 8:15 a.m. to 5 p.m., Monday through Friday, the WCRO regional office shall be notified; otherwise, the Department of Emergency Management shall be notified at 1-800-468-8892.
 - Violations of State water quality standards shall be reported within 24 hours to WCRO office.
2. Activities shall be conducted in accordance with any time-of-year restrictions recommended by the Department of Game and Inland Fisheries or the Virginia Marine Resources Commission.
 3. Corrective action and restoration work as delineated in the approved plan shall **begin no later than 30 days after, whichever one is the last, plan approval by American Electric Power, U.S. Corps Of Engineers, and WCRO.**